

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
AURANGZEB KHATTAK ... **MEMBER (Judicial)**

Service Appeal No. 1226/2021

Date of presentation of Appeal.....19.01.2021
Date of Hearing.....22.07.2024
Date of Decision.....22.07.2024

**Zia Ullah S/O Saiful Wali, Chowkidar, Darul Kafala for beggar
Dalazak Road, Peshawar.Appellant**

Versus

1. The Chief Secretary, Civil Secretariat Peshawar, Government of Khyber Pakhtunkhwa.
2. The Secretary, Social Welfare, Special Education and Women Empowerment Department, Khyber Pakhtunkhwa.
3. The Director, Directorate of Social Welfare and Women Development Department, Khyber Pakhtunkhwa.
4. The Deputy Director (Admn), Social Welfare, Special Education and Women Development Department, Khyber Pakhtunkhwa.
5. The District Officer Social Welfare Department, Peshawar.
6. The Deputy Commissioner, Peshawar.
7. Mr. Umar Ali Khan, Junior Clerk, Office of the Welfare Home Bannu.
8. Mr. Sajid Ali, Junior Clerk, Office of the Directorate of Social Welfare Peshawar.
9. Mr. Naeem Kokar, Junior Clerk, Office of the GIB (M) Peshawar.
.....(Respondents)

Present:

Mr. Muhammad Asif Yousafzai, Advocate.....For appellant
Mr. Muhammad Jan, District AttorneyFor official respondents
.....

Service Appeal No. 2334/2021

Date of presentation of Appeal.....19.01.2021
Date of Hearing.....22.07.2024
Date of Decision.....22.07.2024

**Muzafar Khan S/o Hayat Khan, Sweeper, Rehabilitation Centre
for Drug Addicts, Peshawar.Appellant**

Versus

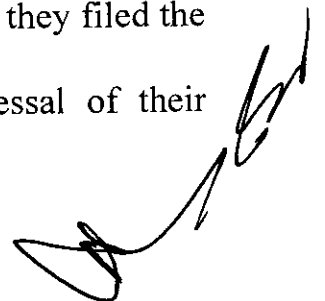
1. The Chief Secretary, Civil Secretariat Peshawar, Government of Khyber Pakhtunkhwa.
2. The Secretary, Social Welfare, Special Education and Women Empowerment Department, Khyber Pakhtunkhwa.
3. The Director, Directorate of Social Welfare and Women Development Department, Khyber Pakhtunkhwa.
4. The District Officer Social Welfare Department, Peshawar.
5. The Deputy Commissioner, Peshawar.
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8. Mr. Naeem Kokar, Junior Clerk, Office of the GIB (M) Peshawar.
.....(**Respondents**)

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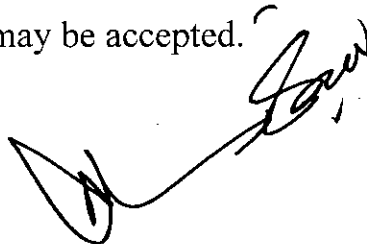
CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: According to the facts gathered from the record, the appellants were initially appointed as Chowkidar and Sweeper in the ADP scheme under the Directorate of Social Welfare and Women Development Department and were later on regularized vide order dated 08.06.2007 with effect from 01.07.2007. The appellants challenged the promotion order dated 30.07.2020, whereby, according to them, juniors to them were promoted to the post of Junior Clerks while they were ignored being senior and eligible. Feeling aggrieved, the appellants filed separate departmental appeals, which were not responded, hence, they filed the instant service appeals before this Tribunal for redressal of their grievance.



2. On receipt of the appeals and its admission to regular hearing, the respondents were summoned. Official respondents put appearance through their respective representative and contested both the appeals by way of filing para-wise reply, raising therein numerous legal as well as factual objections.

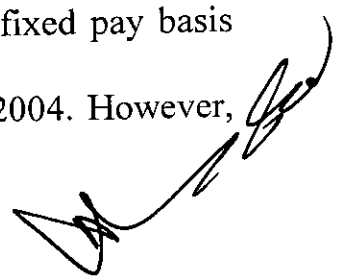
3. Learned counsel for the appellants contended that the appellant namely Zia Ullah in the seniority list issued on 31.07.2017, was placed at Sr. No. 23, while the private respondents (No. 7, 8, and 9) were placed at Sr. No. 30, 38, and lower, respectively and appellant namely Muzafar Khan in the seniority list issued on 31.07.2017, was placed at Sr. No. 20, while the private respondents (No. 6, 7 and 8) were placed at Sr. No. 30, 38 & 47, respectively, therefore, the appellants were entitled to promotion over their juniors based on the seniority-cum-fitness principle. He next contended that the department had framed rules on 25.09.2019, reserving 30% promotion quota based on 'seniority-cum-fitness and requiring an FA/F.Sc qualification and two years of service and the appellants asserted compliance with the criteria, ignoring them from promotion arbitrarily and unjustly. He further contended that by not promoting the appellants alongside their juniors adversely affected their future career prospects, pension, and other benefits. In the last he contended that the legal rights of the appellants had been sidelined in a whimsical and capricious manner without adherence to due process, therefore, both the appeals in hand may be accepted.



4. On the other hand, learned District Attorney for the respondents contended that pursuant to the up-gradation of Junior Clerks from BPS-07 to BPS-11, Service Rules of the respondent-department were revised and only those Class-IV employees were directed fit for promotion to the post of Junior Clerk (BPS-11), who had availed a minimum of F.A/F.SC qualification. He next contended that in the light of revised Service Rules, 2019, seniority list was prepared on the basis of acquisition of the prescribed qualification i.e F.A/F.SC, wherein the appellants were placed at serial No. 49 & 22 respectively of the revised seniority list, therefore, they were not considered for promotion. He further contended that position of the appellants in the revised seniority list was at the lower and middle of the seniority list, as per the revised rules, justifies the non-promotion. He also contended that the appellants have filed the instant appeals for promotion without rectifying their seniority position in the seniority list pertaining to the year 2019, therefore, both the appeals in hand are liable to be dismissed with costs.

5. We have heard the arguments of learned counsel for the appellants as well as learned District Attorney for the respondents and have perused the record.

6. Perusal of the record would show that the appellants were initially appointed as Chowkidar and Sweeper respectively in ADP Scheme of the Department under the Directorate of Social Welfare and Women Development Department, Peshawar on fixed pay basis vide appointment orders dated 24.03.2005 & 25.05.2004. However,



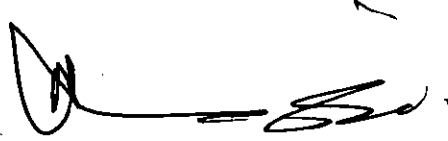
vide office order dated 08.06.2007, the services of the appellants were regularized with effect from 01.07.2007. Admittedly, the appellants have challenged the promotion order dated 30.07.2020, whereby private respondents were promoted to the post of Junior Clerk (BPS-11). The contention of the respondents is that the promotion was done on the basis of revised service rules that required a minimum FA/F.Sc qualification, seniority, and fitness for promotion. They further clarify that the appellants were placed at Serial No. 49 & 22 in the revised seniority list, making them ineligible for promotion according to the rules in place. The record further reveals that in both the appeals, the appellants have sought promotion to the post of Junior Clerk (BPS-11) instead of addressing the issue of their seniority position in the seniority list. It is acknowledged that in the most recent seniority list for the year 2019, the appellants were placed at serial No. 49 and 22. Therefore, it is imperative for the appellants to rectify their seniority position before pursuing the promotion. Failure to address this discrepancy may lead to potential confusion and complications in the promotion process. In the present scenario, the appellants choice to prioritize filing an appeals for promotion over rectifying their position in the seniority list for the year 2019 raises pertinent issues. It is undisputed that their current placement at serial number 49 & 22 necessitates immediate correction to accurately reflect their seniority status. Neglecting to address and remedy the seniority discrepancy may lead to complications and potential conflicts during the promotion evaluation process. By overlooking this fundamental



aspect of their professional standing, the appellants risk undermining the credibility and validity of their promotion appeals.

7. As a sequel to the above, both the appeals in hand stand dismissed. Cost shall follow the events. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 22 day of July, 2024.*



KALIM ARSHAD KHAN
Chairman



AURANGZEB KHATTAK
Member (Judicial)


Naeem Amin

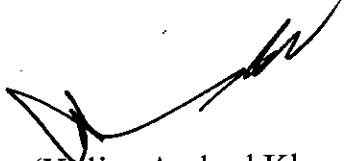
Service Appeal No. 1226/2021 titled "Zia Ullah Versus The Chief Secretary, Civil Secretariat Peshawar, Government of Khyber Pakhtunkhwa and others".

ORDER

22nd July, 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, the appeal in hand stand dismissed. Cost shall follow the events. Consign.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 22 day of July, 2024.*


(Aurangzeb Khattak)
Member (Judicial)


(Kalim Arshad Khan)
Chairman

Naeem Amin